

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

UNIT 5201, FORTUNE FINANCIAL CENTER
5 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT, BEIJING 100020, CHINA
TELEPHONE (86-10) 5828-6300

HONG KONG CLUB BUILDING, 12TH FLOOR
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, UNITED KINGDOM
TELEPHONE (44 20) 7367 1600

WRITER'S DIRECT DIAL NUMBER

(212) 373-3118

WRITER'S DIRECT FACSIMILE

(212) 492-0118

WRITER'S DIRECT E-MAIL ADDRESS

lelynch@paulweiss.com

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

MATTHEW W. ABBOTT
EDWARD T. ACKERMAN
JACOB A. ADLERSTEIN
JUSTIN ANDERSON
ALLAN J. ARFFA
JONATHAN H. ASHTOR
ROBERT A. ATKINS
DAVID J. BALL
SCOTT A. BARSHAY
PAUL M. BASTA
J. STEVEN BAUGHMAN
LYNN B. BAYARD
CRAIG A. BENSON
MARK S. BERGMAN
DAVID M. BERNICK
JOSEPH J. BIAL
BRUCE BIRENBOIM
H. CHRISTOPHER BOEHNING
ANGELO BONVINO
ROBERT BRITTON
DAVID W. BROWN
SUSANNA M. BUERGEL
JESSICA S. CAREY
DAVID CARMONA
GEOFFREY R. CHEPIGA
ELLEN N. CHING
WILLIAM A. CLAREMAN
LEWIS R. CLAYTON
YAHONNES CLEARY
RACHAEL G. COFFEY
JAY COHEN
KELLEY A. CORNISH
CHRISTOPHER J. CUMMINGS
THOMAS V. DE LA BASTIDE III
ARIEL J. DECKELBAUM
KAREN L. DUNN
ALICE BELISLE EATON
ANDREW J. EHRLICH
GREGORY A. EZRING
ROSS A. FIELDSTON
ANDREW C. FINCH
BRAD J. FINKELSTEIN
BRIAN P. FINNEGAN
ROBERTO FINZI
PETER E. FISCH
HARRIS FISCHMAN
ANDREW J. FOLEY
ANDREW J. FORMAN*
HARRIS B. FREIDUS
CHRISTOPHER D. FREY
MANUEL S. FREY
ANDREW L. GAINES
KENNETH A. GALLO
MICHAEL E. GERTZMAN
ADAM M. GIVERTZ
SALVATORE GOGLIORMELLA
NEIL GOLDMAN
MATTHEW B. GOLDSTEIN
ROBERTO J. GONZALEZ*
CATHERINE L. GOODALL
ERIC GOODISON
CHARLES H. GOOGE, JR.
ANDREW G. GORDON
BRIAN S. GRIEVE
UDI GROFMAN
NICHOLAS GROOMBRIDGE
BRUCE A. GUTENPLAN
ALAN S. HALPERIN
CLAUDIA HAMMERMAN
BRIAN S. HERMANN
MICHELE HIRSHMAN
ROBERT E. HOLO
DAVID S. HUNTINGTON
AMRAN HUSSEIN
LORETTA A. IPPOLITO
WILLIAM A. ISAACSON*
JAREN JANGHORBANI
BRIAN M. JANSON
JEH C. JOHNSON
MEREDITH J. KANE
JONATHAN S. KANTER
BRAD S. KARP
PATRICK N. KARSNITZ
JOHN C. KENNEDY

BRIAN KIM
KYLE J. KIMPLER
ALEXIA D. KORBERG
ALAN W. KORBERG
DANIEL J. KRAMER
CAITH KUSHNER
DAVID K. LAKHDHIR
JOHN E. LANGE
GREGORY F. LAUFER
BRIAN C. LAVIN
XIAOYU GREG LIU
LORETTA E. LYNCH
JEFFREY J. MARELL
MARCO V. MASOTTI
DAVID W. MAYO
ELIZABETH R. MCCOLM
JEAN M. MCLOUGHLIN
ALVARO MEMBRILLERA
MARK F. MENDELSON
CLAUDINE MEREDITH-GOUJON
WILLIAM S. MICHAEL
JUDIE NG SHORTELL*
CATHERINE NYARADY
JANE B. O'BRIEN
ALEX YOUNG K. OH
BRAD R. OKUN
KELLEY D. PARKER
LINDSAY B. PARKS
ANDREW M. PARLEN
VALERIE E. RADWANER
JEFFREY J. RECHER
CARL L. REISNER
LORIN L. REISNER
JEANNIE S. RHEE*
WALTER G. RICCIARDI
WALTER RIEMAN
RICHARD A. ROSEN
ANDREW N. ROSENBERG
JUSTIN ROSENBERG
JACQUELINE P. RUBIN
CHARLES F. "RICK" RULE*
RAPHAEL M. RUSSO
ELIZABETH M. SACKSTEDER
JEFFREY D. SAFERSTEIN
JEFFREY B. SAMUELS
KENNETH M. SCHNEIDER
ROBERT B. SCHUMER
JOHN M. SCOTT
BRIAN SCRIVANI
KYLE T. SEIFRIED
KANNON K. SHANMUGAM*
DAVID R. SICULAR
AUDRA J. SOLOWAY
SCOTT M. SONTAG
SARAH STASNY
TARUN M. STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
BRETTE TANNENBAUM
RICHARD C. TARLOWE
MONICA K. THURMOND
DANIEL J. TOAL
LAURA C. TURANO
CONRAD VAN LOGGERENBERG
LIZA M. VELAZQUEZ
MICHAEL VOGEL
RAMY J. WAHBEH
LAWRENCE G. WEE
THEODORE V. WELLS, JR.
LINDSEY L. WIERSMA
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
AUSTIN WITT
MARK B. WLAZLO
JULIA TARVER MASON WOOD
JENNIFER H. WU
BETTY YAP*
JORDAN E. YARETT
KAYE N. YOSHINO
TONG YU
TRACEY A. ZACCONE
TAURIE M. ZEITZER
T. ROBERT ZOCHOWSKI, JR.

*NOT ADMITTED TO THE NEW YORK BAR

July 23, 2020

VIA ECF

Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

Since my July 16, 2020 report to the Court, I have had a joint call with counsel for Federal Defenders, Inc., along with their representatives and with counsel for

the government and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).¹

This week, my conversations with the Federal Defenders and the government have focused on the following topics:

1. The current status of in-person legal visitation at both institutions.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.

II. Telephonic Contact

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

A. MCC

According to the information I have from MCC, MCC scheduled 114 calls between July 16 and July 22, 2020. 105 calls were completed, six were attempted but not completed, and three calls were cancelled for unknown reasons. MCC also reports one court call made in the same timeframe. The Federal Defenders report that as of July 21, 2020, twenty-two calls were pending for more than 48 hours.

B. MDC

According to the information I have from MDC, MDC scheduled 266 calls between July 16 and July 22, 2020. 228 calls were completed, twenty-nine were attempted but not completed, six were cancelled or rescheduled, and three were cancelled for unknown reasons. Additionally, Federal Defenders report that, as of July 21, 2020, twenty-five call or VTC requests were pending for more than 48 hours, down slightly from twenty-seven requests pending on July 14 of last week. *See* ECF No. 81 at p. 2.

III. Videoconferencing

A. MCC

According to MCC records, there were twenty videoconferences scheduled to take place between July 16 and July 22, 2020. Fifteen were completed as scheduled, one was rescheduled, two were attempted but not completed, and two were cancelled for unknown reasons. MCC also reports one court videoconference completed

¹ We held a call with the defendants on July 21, 2020 and a joint call on July 23, 2020.

in the same timeframe. The Federal Defenders report that as of July 21, 2020, sixteen VTCs were pending for more than 48 hours.

B. MDC

According to MDC records, there were forty-five video calls scheduled between July 16 and July 22, 2020. Forty-one calls were completed, three were attempted but not completed, and one was cancelled for unknown reasons. MDC also reported that 10 court VTCs were scheduled in the same timeframe, nine were completed and one was attempted but not completed because the inmate declined to participate. Federal Defenders reports that as of July 21, 2020, ten VTCs were pending for more than 48 hours.

IV. Overflow Calls

The parties continue to discuss the issue of overflow calls, those call and VTC requests Federal Defenders have been unable to schedule for over 48 hours. In its report of July 22 the government noted several potential issues that may be impacting the overflow numbers and the need to explore these issues with plaintiffs. The parties had some discussion of these issues prior to and during the mediation call. They have advised that they will continue those discussions.

V. In-Person Visitation

The parties continue to discuss the logistics of in-person visitation. The MDC has made additional revisions to its plan based upon feedback from Federal Defenders. In today's joint mediation call the parties continued to discuss specific details, and Federal Defenders were also able to provide comments upon the MCC's revised plan. Discussions will continue through the mediation process. As previously noted, there will be a transition period between the guidance change allowing the resumption of in-person visitation and the implementation of the final plans, which will allow for further review and consultation between the parties. The government has indicated it intends to maintain the current system of remote access during this transition period. The parties are also working on several areas on their own through issue specific calls. These issues include discussion regarding a potential scheduling system for attorney client visits and questions about the facilities, as well as discussions about the overflow calls and inmates' access to discovery.

The parties continue to discuss the possibility of a site visit prior to the beginning of in-person visitation. Federal Defenders have requested that such a visit, if authorized, take place as soon as possible. The government has not determined whether it can accommodate the request. Should a site visit be authorized the government has indicated it would schedule such a visit during the transition period. I will continue to discuss this issue with the parties.

VI. Legal Mail

Plaintiffs have asserted that, during a search of numerous cells at the MDC several weeks ago, several inmates had legal documents confiscated, damaged and destroyed. Federal Defenders have provided information on the specific inmates involved. The MDC has indicated it will look into issues of the handling of legal documents that arose during the search and work with counsel on the replacement of documents damaged or destroyed. The parties have indicated that they have had specific conversations, outside the mediation process, on this point and will continue to discuss this issue.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink
Seth D. Eichenholtz, U.S. Attorney's Office (E.D.N.Y.)
Sean Greene, U.S. Attorney's Office (E.D.N.Y.)
Matthew J. Modafferi, U.S. Attorney's Office (E.D.N.Y.)
Jeffrey Oestericher, U.S. Attorney's Office (S.D.N.Y.)
David Jones, U.S. Attorney's Office (S.D.N.Y.)